IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 140 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALITBHAI C MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/04/2001

ORAL JUDGEMENT

1. The petitioners - original accused nos. 3 and 5 in Special Case No. 10 of 1989 filed by the Central Bureau of Investigation, through the State of Gujarat

against them as well as against other accused persons for offences punishable under Section 420 read with Section 34 and 120 (B) of the Indian Penal Code read with Section 34 thereof and under the provision of Section 5 (1) (d), 5(2) of the Prevention of Corruption Act, 1947 have preferred this Criminal Revision under Section 397 of the Code of Criminal Procedure, 1973 (for short "the code") against an order dated 07.12.1998 recorded by the learned Judge of the Special Court No. 3, Ahmedabad City referring to discharge them from the offences with which they stand charged.

2. It was mainly contended on behalf of the State in the said criminal case that some tenders were accepted and the rates were fixed for payment. The State has also alleged in the said case that the accused persons named in the charge sheet have committed criminal conspiracy, and as a part of the said criminal conspiracy, have paid more amount than what was required and agreed to be paid and therefore, the accused persons named in the charge sheet have committed the aforesaid offences.

3. At the stage of framing of charge, the two petitioners have come here stating that the learned Special Judge has committed an illegality in passing an order dated 07.12.1998 rejecting their application for discharging them from the said offences. It is the contention of the present petitioners that they ought to have been discharged from the offences and there is no material before the Court to connect them with the crime. That the Trial Court therefore committed illegality in not discharging them from the said offence. Therefore, they have prayed that the said judgement and order of the learned Special Judge, being the learned Judge of the City Civil and Sessions Court, be set aside and the present petitioners be discharged from the said offences. Notice have been issued and in pursuant to the said notice, Mr.S.P. Dave, learned Additional Public Prosecutor appears for the State, whereas on behalf of the Central Bureau of Investigation Mr Amit J. Shah appears. I have heard the learned Advocates for the petitioner and Mr. S.P. Dave, for the State and MR. Amit J. Shah for respondent no. 2.

4. The learned Advocate for the petitioner has taken me through the judgement and order of the learned Special Judge. It is his contention that there is absolutely no evidence to show that there is some involvement of the present petitioner in the aforesaid offences. During the course of the hearing, it was noticed that out of the accused persons named in the charge sheet, accused nos.

1 and 4 have passed away. Thereafter, accused no.2, the General Manager has been discharged from the said offence by this Court. It is also noticed that so far as accused nos. 6 and 7 are concerned, they have also preferred Criminal Revision Application against the aforesaid judgement and order of the learned Special Judge and according to the statement made by the learned Advocate for the petitioners their Revision Application has been admitted by this Court. Therefore, the remaining accused persons being accused nos. 3 and 5 have presented this Revision Application for challenging the said judgement and order of the learned Special Judge.

5. It was first contended that since the Revision Application of accused Nos. 6 and 7 has been admitted it would be in the fitness of things to admit this Revision Application also. However, the involvement of different accused may be different in a different manner. There may be different things showing the involvement of those accused and therefore simply because the Criminal Revision Application of original accused Nos. 6 and 7 has been admitted by this Court, it does not mean and it is not necessary that even this Revision Application should also be admitted. Therefore, the first contention of the learned Advocate for the petitioner is not acceptable to this Court. It is then contended by him that there is no element of involvement of the present petitioners who are accused nos. 3 and 5 in the aforesaid special case.

6. It has come out from the arguments of the learned Advocates for the parties that petitioner no. 1 who is original accused no. 3 before the Trial Court had signed the bills for payment at higher rate. It is not much in dispute that the petitioner was a member of the committee which has finalised the tenders and which has finalised the rates to be paid. Therefore, the first petitioner had a knowledge as to the rate at which the payment was to be made. While signing the bills, it must have been noticed by him that the rates shown in the bills are higher than the rates agreed by the said committee. Therefore the petitioner could have ommitted to sign the bills and atleast could have made an inquiry as to why the rates shown in the bills are higher than the agreed rats. The prosecution case is that this petitioner being accused no. 3 before the learned Special Judge had signed the bills as a part of criminal conspiracy. This is a matter of fact which is required to be dealt with on appreciation of evidence. This is not the stage at which the evidence can be appreciated and without appreciation of evidence, the role assigned to the present petitioner

no. 1 cannot be decided and therefore it cannot be said that the petitioner had played no role at all and therefore, he should be discharged out right. The learned Advocate for the petitioner has also argued that the present petitioner had signed the bills at the instance of his higher Officer. This is again a statement of fact in defence which is required to be appreciated on appreciation of evidence. This is not the stage at which the Court can consider even the defence of the accused.

7. Even otherwise, when the said statement is made before this Court, then again it is to be appreciated as to why he blindly signed the said bills showing payments at higher rates. It would therefore be a matter of appreciation whether it was a bonafide act on the part of the present petitioner - original accused no. 3 or whether it was a part of criminal conspiracy. It would also be required to be appreciated as to whether he acted blindly, but honestly under the directions of his higher officer or he acted as a part of criminal conspiracy. This again requires appreciation of evidence. Again this is not a stage at which the Court can undertake the process of appreciation of evidence.

8. As regards, petitioner no. 2 who is original accused no. 5 before the Trial Court, he is shown to be a Senior Clerk who is alleged to have preferred the bill showing higher rates than the rate agreed by the said committee of which petitioner no. 1 was a member.

9. With respect to petitioner no. 2, arguments have been advanced that he was doing a clerical job. Again it is required to be appreciated as to whether or not he knew the agreed rate on which payment was required to be made. If he knew it, again it is required to be appreciated as to why he prepared the bills for payment at the rate higher than the agreed rate. The next appreciation would be as to whether he acted with bonafides at the first instance some Officer or otherwise. It will also be required to be considered as to whether he acted under the order of his Seniors or whether he acted as a part of criminal conspiracy. This appreciation can be made only when the evidence is there on record. Since the charge has yet not been framed, naturally the evidence has yet not been started and in absence of evidence, it would not be possible for even this Court to decide the issue as to the involvement of petitioner no. 2 in the said offence.

10. The learned Advocate for the petitioner has also

argued that as per practice, a note is received from the Administrative Branch and on the basis of the said note, bills are prepared. It is also argued that the bills are required to be checked and thereafter they are being signed again. It is a matter of dispute as to whether or not the bills have been legally and properly checked, or whether the checker was a part of the alleged criminal conspiracy. Therefore, when the second petitioner was expected to know the rates at which the payment was required to be made, it was necessary for him, prima-facie, to prepare the bill as per the agreed rate, instead he has prepared bills at higher rate. It would therefore not be possible for this Court to say at this stage as to whether it was a part of criminal conspiracy on his part or it was a matter of bonafide ommission or it was a matter of bonafide negligence.

11. Therefore all these things can be decided only when evidence is produced and the evidence can be produced only when the charge is framed. Therefore, it cannot be said that it is a case of no evidence against these two petitioners.

12. In STATE OF U.P. Vs. UDAI NARAYAN reported in 2000 Supreme Court cases (Criminal) 74 it has been observed that the High Court has committed a serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinising the evidence and materials produced by the prosecution.

13. In other words, this Court is not required to go for the detailed discussion and for detailed examination of material for the purpose of framing the charge. The Court has to apply its mind as to whether there is a prima-facie case against the accused persons. The present case being a case of criminal conspiracy even the circumstantial evidence will also be required to be considered but that can be done when the evidence is produced and not at the stage when the charge is to be framed.

14. Even in STATE OF M.P. Vs. S.B. JOHARI reported in 2000 Supreme Court cases (Criminal) 311, it has been clearly laid down that the exercise of appreciating material produced by the prosecution at the stage of framing the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120 (B). In most of the cases, it is only from

the available circumstantial evidence that inference of conspiracy is to be drawn.

15. Under the aforesaid circumstances I am of the decision that it cannot be said that the Trial Court has committed illegality in not discharging the present petitioner. It cannot be said that there is absolutely no material against the petitioners and therefore no charge can be framed against them and they are required to be discharged out right. This being a revisional jurisdiction the power of revision is very limited. Even when the order of the Court below is wrong then also this Court has to be slow in interfering with the order of the Trial Court. Any way I am of the opinion that there is no merit in the present Revision Application, the same deserves to be dismissed. Accordingly, this Revision Application is dismissed at admission stage.

(D.P. BUCH,J.)

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